

TOWN OF KITTERY, MAINE  
BOARD OF APPEALS

APPROVED  
April 29, 2014

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa, Gary Beers

Members absent:

Staff: Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:02 p.m.

Mr. Gardner advised the applicants there are only five members of the Board, therefore four like votes are needed for the application to be approved. The applicants agreed to continue.

Mr. Wilson noted Title 16.1.5.2.F.4 authorizes the Board of Appeals to hear the following Miscellaneous Variations.

ITEM 1: SSG6, LLC, 436 US Route 1, Map 50 Lot 9, MU

SSG6, LLC requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.13D in order to construct a 5' x 7' awning.

Suzanne Schepis-Gray: This request is for a cafe bistro with an awning to cover entry.

There was no additional testimony. The CEO provided:

1. This is a non-conforming lot with non-conforming structure located in the Mixed Use zone.
2. Ms. Gray has submitted a building permit application to construct a 5' x 7' awning.
3. Title 16.3.2.13.D requires a minimum 60-foot front yard setback. The proposed awning unit is less than the required setback, but no closer than the currently existing structure.

Mr. Wilson noted this appears to be no closer than what currently exists. Mr. Costa and Mr. Boyle had no questions or concerns. Mr. Beers asked how the setback is determined for this application. The CEO explained the measurement is taken to the front property line from the building or, in this case, the awning. There is also no differentiation between a permanent or temporary (awning) structure. Mr. Beers read the definition of building: *any structure having a roof supported by columns or walls and intended for the shelter, housing, or enclosure of persons, animals, or property. Each portion of a building, separated from other portions by a fire wall, is considered as a separate structure.*

Mr. Costa moved the application is in substantial compliance with the requirements of Title 16.6.6.1. Conditions and 16.6.6.2 Factors for Consideration.

Mr. Boyle second

Motion carried unanimously by members present

Mr. Costa moved to grant a miscellaneous variation to SSG6, LLC requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.13.D in order to construct a 5' x 7' awning, located at 436 US Route 1, Map 50 Lot 9, in the Mixed Use Zone, with no conditions.

Mr. Beers seconded

Motion carried unanimously by members present

Findings of Fact:

1. SSG6, LLC, represented by Suzanne Schepis-Gray, requested a Miscellaneous Variation to the terms of Title 16 Section 3.2.13.D in order to construct a 5' x 7' awning, located at 436 US Route 1, Map 50 Lot 9, in the Mixed Use Zone right.
2. Front yard requirement is 60 feet; awning is located less than the required 60 feet at 36.6 feet. It is no closer than the right side of the existing building, which is closer to the front setback.
3. This is a non-conforming lot with non-conforming structures.

Mr. Costa moved to accept the Findings as read  
Mr. Boyle seconded  
Motion carried unanimously by members present

Conclusion:

Per Title 16.7.3.5.5 Nonconforming Structure Repair and Expansion, the Board finds the requested structure is no closer than the closest point of the existing building and grants the Miscellaneous Variation.

Mr. Beers moved to accept the Conclusion as read  
Mr. Boyle seconded  
Motion carried unanimously by members present

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

ITEM 2: Miriam Habert & Nicholas Jacques, 81 Pepperrell Rd, Map 26 Lot 23, R-KPV  
Miriam Habert and Nicholas Jacques requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.3D in order to demolish and reconstruct a single family dwelling unit.  
Miriam Habert explained the home was purchased for rehabilitation, but multiple builders found the building was not salvageable. They wish to take the building down and rebuild on the same foundation.

Mr. Gardner noted written material must be submitted 7 days prior to a meeting, however, photographs may be submitted at the meeting, and he feels the survey information posted by Ms. Driscoll can be considered as photographs. Board members agreed and had no objection.

Debbie Driscoll, 9 Pepperrell Terrace, abutter, presented testimony and survey evidence regarding the close proximity of the existing structure, and requested the proposed re-construction not be allowed so close to her property line. She noted the house has been there for many years, but the handicapped ramp was added in the 1990s. The ramp includes a deck area to the right to access sliders into the house. There is also a deck area at the front of the house, but it does not appear a wheelchair could enter through the front door. She was told because it was an ADA ramp, the current owners did not require approval at the time it was built. She is concerned with allowing utilization of the ADA ramp/deck area, placing new construction within approximately 2 feet from her property line. She pointed out survey areas, noted the dumpster is located over the property line, pointed out the easement for the driveway to the property and the Derby property, commented on the prior division of lots approved by David Schmidt, creating this small lot, and asked if an ADA ramp is not used, doesn't it go away? Mr. Wilson asked if the prior lot division is relevant to this issue currently before the Board. Ms. Driscoll stated the property's septic and leach field is not on the subject property and has an easement, noting the town has done something that should have not been done, but concurred there is nothing the Board can do regarding the establishment of a lot on .06 acres. How does the code deal with a house built on a handicapped ramp? Building on the existing foundation would be fine, but on the handicapped ramp would bring the structure too close to her property line. The lot was created on January 16, 1998.

George Derby, 77 Pepperrell Road, abutter, owns the property directly behind the subject property and is .9 feet from the existing building. He has no problems with rebuilding the home, but asked if the building could move forward to allow for access to the rear for maintenance? The ROW is shared and he asked for consideration regarding keeping the ROW clear of construction traffic, and maintenance of the construction dumpster.

Miriam Habert: was not aware of the history of the ramp, but would like to incorporate the side deck area into the proposed reconstruction. Following discussion, Mr. Costa noted the sloped ramp will be removed and incorporated into a deck. Brian Boyle noted a portion of the side deck area is being incorporated into new living space.

Discussion followed regarding the areas referenced as deck and ADA ramp. Ms. Driscoll stated the side deck area was always part of the ADA access from the sloped ramp to the side entrance of the house and was never really a deck. The tax card references the construction as ADA access. Had it been anything other than ADA related, it would have required Board review. She also stated if the structure is being demolished it should be rebuilt to setback standards to the most practical extent possible, per code.

Ms. Habert noted they would like to move the foundation, but to do so would not be financially viable. There was no further public testimony. The CEO provided:

1. This is a non-conforming lot with non-conforming structure, and nonconforming building coverage, located in the Residential-Kittery Point Village R-KPV zone.
2. Ms. Habert and Mr. Jacques have proposed to demolish the existing single family dwelling unit and to construct a new single family dwelling unit.
3. Title 16.3.2.3.D requires a minimum 40-foot front yard. The proposed single family dwelling unit is less than the required setback, but no closer than what currently exists.
4. Title 16.3.2.3.D requires a minimum 15-foot rear and side yard. The proposed single family dwelling unit is less than the required setback, but no closer than what currently exists.
5. Title 16.3.2.3.D allows a maximum 20% building coverage. The proposed single family dwelling unit is more than the maximum 20% building coverage by .1%, but no more non conforming than the existing building coverage. Though the base dimensions are the same, the tax card shows an 8'x7' covered front porch which is included in building coverage, which the applicant proposes to relocate to the right side of the existing footprint.
6. Regarding the lot-split, a 1999 letter from David Schmidt determined each lot was a lot of record (i.e. lot a and b). The building permit from 1993 included the ADA access ramp, though no process was required at that time. Now an ADA variance would be needed, including Board of Appeals review.
7. A portion of the original survey shows ADA compliance and requests for lot cover and side yard ADA setbacks and variances. However, there is no approval or date attached to these requests.

Mr. Beers: Regarding Title 16.6.6.2. Factors for Consideration:

H - Is off-street parking available? Mr. Gardner stated parking is available on the parcel.

J - Will the structure cause overcrowding of land...?

K - Is the plot area sufficient? There would be no opportunity for expansion.

L - Is use adequately screened and buffered?

Mr. Beers: the nonconformities could continue, but no worse than what currently exists. However, the expansion to the side would be in excess of 20% lot coverage. CEO: the front porch area, included as part of existing lot coverage, is being moved and used for the side expansion. In the KPV zone, building coverage includes decks. Mr. Beers: it appears the building coverage exceeds the allowance in the zone at 28%. Mr. Boyle: there is a discrepancy between Mr. Beer's and the CEO's calculations for building coverage. This should be resolved and, if coverage is more than allowed, would the applicant agree to amend their plan to keep the building coverage within the standards allowed? Mr. Wilson: agreed with Mr. Boyle and questioned whether the Board can allow the area covered by an ADA deck be used for a building expansion. Mr. Gardner: does the proposal meet the Factors for Consideration J and L; is there a emergency access issue to the north side of the building; the building could be moved more to the center of the lot; suggested the applicant withdraw the application and return with a significantly revised plan. Mr. Costa: the foundation is part of the house, and the applicant should not be required to move the building to another location if the existing foundation can be used; there is access surrounding the house for emergency response; he would concur the ADA ramp areas should not be used to expand the dimensions of the home. Mr. Beers: if a foundation exists it can be used for new construction; agreed there should be no additional 'bump-out'; agreed that construction over the ADA ramp area would increase the total building coverage allowed. Mr. Gardner: 1. Application can be continued, giving the applicant an opportunity to consider discussions and change plans; 2. Conditions and modifications can be included in a motion if moved forward at this time; or, 3. Applicant can modify the plan now for consideration at this meeting.

Mr. Wilson: the building coverage discrepancy needs to be resolved before a decision can be made; he would not approve construction outside of the existing foundation; the town should explore what happens to ADA ramps. CEO: ADA ramp applications reviewed by the Board of Appeals typically include a provision the ramps must be removed once its use ceases to exist. Discussion followed regarding the front deck area as not part of the ADA ramp and side deck; road maintenance; consensus building; Board authority to require removal of ADA structure; continuance of application review; modification of the application. The CEO submitted a plan recommendation that would not create a more non-conforming building. Board members agreed to have the applicant review the plan with the CEO.

Break

Following discussion with the applicant, the CEO presented the revised plan to the Board for consideration.

Mr. Costa moved to grant to Miriam Habert & Nicholas Jacques, 81 Pepperrell Rd, Map 26 Lot 23, R-KPV zone, a Miscellaneous Variation to the terms of Title 16.3.2.3.D in order to demolish and reconstruct a single family dwelling. The approval is modified from the originally presented plan, and is contingent upon:

1. reconstruction shall be no closer than the existing structures to the front, side and rear property lines;
2. there will be no obstructions to the ROW during construction;

Mr. Boyle second

Motion carries 4 in favor; 1 against (Gardner); 0 abstentions

Mr. Costa moved to modify the motion to replace structures with 'building'.

Mr. Boyle seconded

Motion carried unanimously by members present

Revised Motion:

Mr. Costa moved to grant to Miriam Habert & Nicholas Jacques, 81 Pepperrell Rd, Map 26 Lot 23, R-KPV zone, a Miscellaneous Variation to the terms of Title 16.3.2.3.D in order to demolish and reconstruct a single family dwelling. The approval is modified from the originally presented plan, and is contingent upon:

1. reconstruction shall be no closer than the existing *building* to the front, side and rear property lines;
2. there will be no obstructions to the ROW during construction;

Mr. Boyle second

Motion carries 4 in favor; 1 against (Gardner); 0 abstentions

Findings of Fact:

1. Miriam Habert presented testimony that the building [located at 81 Pepperrell Rd, Map 26 Lot 23] could not be restored due to extensive damage, but must be demolished and reconstructed;
2. This is a non-conforming lot with non-conforming structure, and nonconforming building coverage, located in the Residential-Kittery Point Village R-KPV zone;
3. Title 16.3.2.3.D requires a minimum 40-foot front yard, where 18 feet exist;
4. Title 16.3.2.3.D requires a minimum 15-foot rear and side yard, where from less than one foot and four feet exist;
5. There was discussion this was a lot of record as determined by the Planner in 1998;
6. Building permits were issued in 1993 building permits for interior construction and an ADA ramp;
7. Septic is by easement;
8. There was extensive discussion regarding the ADA structures and their removal;
9. Testimony from the applicant noted financial constraints in moving the building to a different location on the lot;

10. The Board discussed 16.6.6.1 Conditions and 16.6.6.2 Factors for Consideration (Items J,K,L and others) and found the application, with modifications, to be substantially compliant.

Mr. Costa moved to accept the Findings as read  
Mr. seconded  
Motion carried unanimously by members present

Conclusion:

The Board has the authority to grant a Miscellaneous Variation under Title 16.7.3.5.5 Nonconforming Structure Repair and/or Expansion, and found the modified proposal to reconstruct will be no more nonconforming than what currently exists.

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

Mr. Wilson requested the CEO provide a narrative to the file regarding the modification and the ADA issue.

ITEM 3: Dennis Wilson, 21 Idlewood Lane, Map 66 Lot 20, R-RL

Dennis Wilson requesting a Miscellaneous Variation to the terms of Title 16 Section 3.2.1D in order to remove an existing mobile home and to install a new mobile home.

Dennis Wilson rested on the materials submitted for review.

There was no public testimony. The CEO provided:

1. This is a nonconforming lot with nonconforming structures and a nonconforming use, located in the Residential-Rural zone;
2. Title 16.2.1.B, permitted uses, allows dwellings or modular homes, exclusive of mobile homes. Mr. Wilson has proposed a mobile home, which is a non-conforming use, though not more non-conforming than what currently exists.
3. Title 16.3.2.1.D requires a minimum forty foot front yard setback. This is a corner lot, requiring a front yard setback from both Idlewood Lane and the private ROW on the right side of the property. The proposed mobile home is less than the required setback, but no closer than what currently exists.
4. Title 16.3.2.1.D requires a minimum 20 foot side yard setback. The proposed mobile home is less than the required setback, but no closer than what currently exists.
5. Title 16.3.2.1.D allows a maximum 15% building coverage. The proposed mobile home is more than the allowed 15% coverage, but no more than what currently exists.

Mr. Beers noted he was formerly associated with the Yankee Mobile Home Park, an abutter. Board members concurred there was no conflict. He noted these mobile home dimensions are usually rounded up, so the actual dimension would be 23.5 x 35 feet. Mr. Dennis Wilson stated his unit's dimensions were 24x36 feet. Following discussion, the CEO determined the existing building coverage was 14.3% and the proposed building coverage at 19.4%, including the storage sheds on site. If the sheds are removed, the building coverage would then be 16%. Utilizing the dimensions provided by Mr. Beers, the coverage would be 15.2%, or 12.5 sf. Mr. Beers: the mobile home the applicant is purchasing is considered a doublewide and they do not come any smaller.

Mr. Beers moved to grant to Dennis Wilson, 21 Idlewood Lane, Map 66 Lot 20, Residential-Rural zone, a Miscellaneous Variation to the terms of Title 16.3.2.1.B. and Title 16.3.2.1.D

Mr. Boyle seconded

Motion carries with 4 in favor; 1 against (Wilson); 0 abstentions

Findings of Fact:

1. Dennis Wilson, 21 Idlewood Lane, Map 66 Lot 20, Residential-Rural zone requested a Miscellaneous Variation to replace a mobile home with a larger mobile home to be relocated on the lot;
2. This is a nonconforming lot with nonconforming structures and a nonconforming use, located in the Residential-Rural zone;
3. Title 16.2.1.B, permitted uses, allows dwellings or modular homes, exclusive of mobile homes. Mr. Wilson has proposed a mobile home, which is a non-conforming use, though not more non-conforming than what currently exists.
4. Title 16.3.2.1.D requires a minimum forty foot front yard setback. This is a corner lot, requiring a front yard setback from both Idlewood Lane and the private ROW on the right side of the property. The proposed mobile home is less than the required setback, but no closer than what currently exists.
5. Title 16.3.2.1.D requires a minimum 20 foot side yard setback. The proposed mobile home is less than the required setback, but no closer than what currently exists.
6. Title 16.3.2.1.D allows a maximum 15% building coverage. The proposed mobile home is more than the allowed 15% coverage, but no more than what currently exists.
7. Following extensive discussion, the Board found the new mobile home would create a 15.2% building coverage on the lot with the removal of the existing sheds, where 14% currently exists.

Mr. Beers moved to accept the Findings as read.

Mr. Boyle seconded

Motion carried unanimously by members present

Mr. Costa moved the application is in substantial compliance with the requirements of Title 16.6.6.1. Conditions and 16.6.6.2 Factors for Consideration.

Mr. Boyle second

Motion carried unanimously by members present

Conclusion:

The Board has the authority to grant a Miscellaneous Variation under Title 16.7.3.5.5 Nonconforming Structure Repair and/or Expansion when the nonconformity is no closer than the current nonconformity.

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

Minutes: April 25, 2014

Mr. Wilson moved to accept the minutes of April 25, 2014 as amended

Mr. Boyle seconded

Motion carried 4 in favor; 0 against; 1 abstain (Beers)

Mr. Wilson moved to adjourn

Motion carried by all members present

The Board of Appeals meeting of April 29, 2014 adjourned at 9:30 p.m.

Submitted by Jan Fisk, Recorder, May 4, 2014